Supreme Court, U.S.
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In The

Supreme Court of the United States

MUHAMMED ANWAR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Under the marriage fraud statute (8 U.S.C. § 1325(c)), whether the citizenship of the parties entering the alleged fraudulent marriage is an element of the crime?

Under the marriage fraud statute (8 U.S.C. § 1325(c)), whether a foreign national's fraudulent intent when entering a marriage can be inferred when he does not testify at trial?

Can there be a violation of the marriage fraud statute (8 U.S.C. § 1325(c)) when the female United States citizen testifies she intended a true marriage and the foreign national does not testify?

Whether the district court abused its discretion, and violated the Supreme Court's holding in *Huddleston v. United States*, 485 U.S. 681, 108 S. Ct. 1496, 97 L. Ed. 2d 771 (1988), when it denied defense counsel's repeated requests for a limiting instruction prior to evidence being admitted against defendant under Federal Rule of Evidence 404(b)?

Whether the district court abused its discretion when it responded to a jury note in the negative regarding reviewing the trial testimony from two important government witnesses without consulting the defendant?

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OPINIONS BELOW

On November 14, 2005, the Eighth Circuit Court of Appeals affirmed the judgment of the District Court for the Northern District of Iowa. *United States v. Anwar*, 428 F.3d 1102 (8th Cir. 2005). App. 1. Anwar's petition for rehearing was denied December 23, 2005. App. 32.

JURISDICTION

On November 5, 2004, the "JUDGMENT IN A CRIMINAL CASE" was entered by the Honorable Linda R. Reade, in the United States District Court for the Northern District of Iowa. App. 21. Jurisdiction was pursuant to 18 U.S.C. § 3231.

On November 14, 2005, the Eighth Circuit Court of Appeals affirmed the judgment of the District Court. *United States v. Anwar*, 428 F.3d 1102 (8th Cir. 2005). App. 1. Anwar's petition for rehearing was denied on December 23, 2005. App. 32. Jurisdiction was pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291.

Jurisdiction for the Supreme Court is from 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional

U.S. CONST. amend V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or

indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Statutes

8 U.S.C. § 1325(c)

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

18 U.S.C. § 2

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 371

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 3231

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

18 U.S.C. § 3742(a)

(a) Appeal by a Defendant. – A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence –

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . .

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to

the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

STATEMENT OF THE CASE

On November 19, 2003, Anwar was charged with one count of conspiracy to commit marriage fraud in violation of 18 U.S.C. § 371 and one count of aiding and abetting the commission of marriage fraud in violation of 8 U.S.C. § 1325(c) and 18 U.S.C. § 2. Indictment.

A jury trial began February 17, 2003, and ended with guilty verdicts on both counts on February 23, 2003. Verdict Forms; App. 38-41.

On November 5, 2004, Anwar was sentenced to six months in prison under the Federal Sentencing Guidelines. Sentencing transcript p. 47.

At trial eight females testified Anwar sought to arrange marriages between them and foreign nationals. Anwar was to receive no benefit for his role in effectuating these marriages.

Amy Akhtar, 28, was married to Mamoon Akhtar and had known Anwar for six to seven years. Trial tr. 390-92, 410-11, 425.[1] In 1999, Akhtar communicated with Anwar about her family problems. Trial tr. 392-93. Akhtar had one conversation with Anwar about wanting a better life and Anwar agreed she deserved better. Trial tr. 394, 401. Anwar said he could help her have a better life and his nephew was a good guy. Trial tr. 394.

[1] "Trial tr." refers to the trial transcript.

Akhtar testified she married Anwar's nephew because she wanted a better life, that it was a true marriage, and that she intended to live together with the nephew as husband and wife. Trial tr. 399-400. They went through a Muslim ceremony, had pictures taken after the wedding, and she stayed in Pakistan for a week following the wedding. Trial tr. 402-03. The marriage did not workout because the nephew did not appeal to her. Trial tr. 400.

Amanda Reinier, 23, had been friends with Anwar since 1995. Trial tr. 319, 321. Out of friendship Anwar had previously given her spending money and assisted her ex-husband in purchasing a vehicle. Trial tr. 366-72. She testified at Anwar's request that she married Hamid Bashir. Trial tr. 328-34. Bashir did not testify at trial. With the help of an attorney she filled out immigration paperwork in order for Bashir to become a United States citizen. Trial tr. 334-35, 377-78. Reinier decided to join the army and then came forward claiming her marriage to Bashir was fraudulent. Trial tr. 353-55.

Amy Gauthier, 30, had known Anwar since 1996. Trial tr. 290-91. Anwar asked her to marry his nephew in Pakistan and she said no. Trial tr. 292-93.

Mary Tucker, 28, testified that in 2001 Anwar brought two Pakistani men into a store and asked her to marry them and she said no. Trial tr. 102-05. Anwar was aware she was unmarried with three children and struggling financially. Trial tr. 116-25.

Keeley Hoyt Ali, 21, had known Anwar since 2002. Trial tr. 136, 152. She spent a lot of time hanging around Anwar's store. Trial tr. 200. She was subsequently employed at the store. Trial tr. 140. She spent time socializing at Anwar's home with people from the Pakistani community. Trial tr.

161-64. She had prior relationships, and living arrangements, with men from Pakistan and India. Trial tr. 153-58, 160, 162-65, 186-89, 192-93, 196-97. Anwar asked her to marry two Pakistanis and she said no. Trial tr. 140-50.

Keeley Ali made plans with Mamoon Akhtar to marry Akhtar's nephew in Pakistan, but she backed out the day before she was scheduled to leave. Trial tr. 149-50, 200.

Essie Cooper, 22, met Anwar in 2002. Trial tr. 203, 204. She testified Anwar asked her to marry an individual from Pakistan and she said no. Trial tr. 206-208. Cooper did marry Saqib Chudarry so he could stay in the United States, but Anwar had nothing to do with this. Trial tr. 208-12, 215-16, 227-31.

Sherry Ali, 32, had known Anwar since 1992. Trial tr. 260, 262. She testified Anwar asked her to marry foreign nationals and she said no. Trial tr. 264-67. Ali had been fired from Anwar's store for stealing. Trial tr. 272-73. She also lied to INS regarding her marriage to her husband Rehmat Ali. Trial tr. 260, 275-79.

Kayleen Nazir, 23, met Anwar in 1998. Trial tr. 433, 436. She testified Anwar asked her to marry his nephew in Pakistan and she said no. Trial tr. 438-43. Nazir had lied to law enforcement regarding her husband Akhlaq (Jack) Nazir, who she had been married to two times. Trial tr. 433-35, 444.

During trial two witnesses testified that Anwar was involved in a marriage between a female and a foreign national, for which Anwar was to receive no benefit.

Cheryl Stempien, 47, testified she attended a wedding between LeAnne Roof and "Younis" at the Blawk Hawk County Courthouse. Trial tr. 249. Stempien first testified

that the wedding occurred in the early 90's, but then said it occurred in the late 90's. Trial tr. 245-48. During the course of the wedding Stempien said she heard Anwar say he would pay Roof $2,000.00 to marry "Younis." Trial tr. 250.

Saqib Chudarry, an illegal alien who was in jail, testified Anwar set up a marriage between Leanne Roof and "Unis Hamid." Trial tr. 458-62, 468-73, 560, 563, 569-73, 581-86, 593-95.

Defense expert Dr. Natrajan testified arranged marriages are a custom in Pakistan. Trial tr. 673-87.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I. THE RECORD EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICTS FOR MARRIAGE FRAUD.

This issue originates from the Due Process Clause which protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In Re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368 (1970). The critical inquiry on review of the sufficiency of the evidence to support a criminal conviction is to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 207, 99 S. Ct. 2781, 2788-89, 61 L. Ed. 2d 560 (1979).

For this case the question during trial was whether Anwar assisted or encouraged American females to marry foreign males so the males could either come to or stay in

the United States. Not one witness testified that Anwar received any benefit for these marriages. A major question was whether many of the females were citizens of the United States and whether the males were foreign nationals. There was also a question as to whether each marriage was to be a true marriage, as opposed to a fraudulent marriage.

A. Challenge to the Conspiracy to Commit Marriage Fraud.

The evidence was insufficient to find Anwar guilty of conspiracy to commit marriage fraud (Count 1). The crime of conspiracy to commit marriage fraud, as charged in Count 1, has four essential elements. The jury was instructed as follows:

> *One, between about 1993 and November 2003, two or more persons reached an agreement or came to an understanding to enter into marriage for the purpose of evading a provision of the immigration laws;*
>
> *Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;*
>
> *Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding was to evade immigration laws; and*
>
> *Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more of the following acts:*

1. In about March 2000, in Karachi, Pakistan, Muhammad Anwar asked Amy Akhtar, a then-unmarried United States citizen to marry his nephew in Pakistan. Amy Akhtar went through with the marriage after knowing the nephew for a few hours.

2. Between about March 2000 and about November 2000, and after Amy Akhtar returned to the United States, defendant Muhammad Anwar repeatedly asked Amy Akhtar to complete the paperwork to allow Anwar's nephew to enter and remain in the United States.

3. In late 2002 or early 2003, Muhammad Anwar did knowingly and unlawfully aid and abet the marriage of Amanda Reinier, a then-unmarried female and United States citizen, and Hamid Bashir for the purpose of allowing Hamid Bashir to remain in the United States and evade immigration laws.

4. Hamid Bashir and Amanda Reinier were married on or about February 13, 2003. The marriage was for the purpose of allowing Hamid Bashir to evade immigration laws.

5. After February 13, 2003, Muhammad Anwar purchased or assisted in purchasing a vehicle for Amanda Reinier in exchange for her agreement to marry Hamid Bashir.

6. Shortly after the marriage on February 13, 2003, Muhammad Anwar, on

> *a number of occasions, continually directed Amanda Reinier to complete the INS paperwork to allow Hamid Bashir to evade immigration laws.*
>
> *7. In about October 2003, Muhammad Anwar strongly discouraged Amanda Reinier, then married to Hamid Bashir, from continuing with proceedings to having her marriage annulled. Muhammad Anwar suggested to her that an annulment, as opposed to a divorce, would interfere with Hamid Bashir's ability to remain in the United States and continue to evade the effective enforcement of immigration laws.*

Jury Instruction 15; App. 33.

The jury found Anwar was only involved in overt acts 1, 2, 3, 4, and 6. Verdict Form-Count 1, Question 3; App. 39-40.[2] The jury further found Anwar conspired with Leanne Roof, Amanda Reinier, Amy Gauthier, Hamid Bashir, and Amy Akhtar to commit marriage fraud. Verdict Form-Count 1, Question 2; App. 38.

The laws of conspiracy and marriage fraud are defined by statute and case law.

Conspiracy is defined by statute as follows:

> If two or more persons conspire either to commit any offense against the United States, or to defraud

[2] Jury Instruction 15, overt acts 1 through 7, correspond with Verdict Form, Question 3, a through g. The jury was asked to place a check mark by the overt acts they found were committed in furtherance of the conspiracy.

> the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. § 371.

To convict a defendant of criminal conspiracy, the government must prove that the individual entered an agreement with at least one other person, that the agreement had as its objective a violation of the law, and that one of those in agreement committed an act in furtherance of the objective. *United States v. Sopczak*, 742 F.2d 1119, 1121 (8th Cir. 1984) (citations omitted). Mere knowledge of an illegal act or association with an individual engaged in illegal conduct is insufficient. *United States v. Raymond*, 793 F.2d 928, 932 (8th Cir. 1986).

In this case, the conspiracy involved marriage fraud. Marriage fraud is defined by statute:

> Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

8 U.S.C. § 1325(c).

In order to establish the existence of conspiracy to commit marriage fraud, the government had to prove that an agreement to violate the immigration laws existed between Anwar, the female United States citizens, and the foreign nationals. *See United States v. Vickerage*, 921 F.2d 143, 146 (8th Cir. 1991). The marriage fraud statute required the government prove that Anwar knew that his conduct was unlawful. *United States v. Chowdhury*, 169

F.3d 402, 407 (6th Cir. 1999). A marriage is a sham if the bride and groom did not intend to establish a life together at the time they were married. *United States v. Orellana-Blanco*, 294 F.3d 1143, 1151 (9th Cir. 2002) (citation omitted).

By focusing on the overt acts and the co-conspirators it is clear that no law had been violated and there was no conspiracy to commit marriage fraud.

1. There was nothing illegal about the overt acts involving Amy Akhtar as stated in Jury Instruction 15, acts 1 and 2. Akhtar was not a co-conspirator. No conspiracy was established.

First, in Karachi, Pakistan, Anwar did not ask Akhtar to marry his nephew, Tariq, as stated in overt act 1. *See supra* p. 10. Anwar had a conversation with Akhtar regarding the marriage in Lahore, Pakistan. Trial tr. 396-98.

Second, Akhtar did not go through with the marriage after knowing the nephew for a few hours as stated in overt act 1. *See supra* p. 10. The true marriage occurred five to six hours after meeting the nephew. Trial tr. 400.

Third, Akhtar testified that her marriage to the nephew was a true marriage, that she wanted a better life, and that she intended to live together with the nephew as husband and wife. Trial tr. 399-400. Akhtar and the nephew went through a Muslim ceremony, had pictures taken after the wedding, and she stayed in Pakistan for a week following the wedding. Trial tr. 402-03. The marriage did not workout because the nephew did not appeal to her. Trial tr. 400. This was not a "green card" marriage. Akhtar had been involved in a "green card" marriage in 1999 and knew what they were. Trial tr. 411-15.

Fourth, Anwar did not pay for Akhtar's plane ticket to Pakistan for the wedding. Akhtar traveled with Sonny and Mijula to Pakistan and Sonny paid for her ticket. Trial tr. 396, 415-16. Sonny also helped her acquire a passport. Trial tr. 395.

Fifth, there was no evidence that Anwar's nephew was a foreign national. Based on the trial testimony from ICE Agent Papin, the marriage fraud statute is violated when a foreign born person from outside the United States marries a United States citizen for the purpose of getting a "green card" and evading immigration laws. Trial tr. 67-70. If the nephew was not a foreign national, but a United States citizen, he could not have made an agreement to violate United States immigration laws by marrying a female United States citizen.

Sixth, the government failed to prove the nephew's intent when marrying Akhtar was for the purpose of evading any provision of the immigration laws as required by 8 U.S.C. § 1325(c). The nephew may have intended the marriage to be genuine thus not in violation of the law. The nephew never testified at trial, so there is no evidence of his intent.

Seventh, there was no motivation for Anwar to arrange this marriage. There was no evidence Anwar financially or emotionally benefited from the marriage.

2. There was nothing illegal about the overt acts involving Amanda Reinier and Hamid Bashir as stated in Jury Instruction 15, acts 3, 4, and 6. Reinier and Bashir were not co-conspirators. No conspiracy was established.

First, the government failed to prove that Reinier was a United States citizen and that she intended to enter into

a false marriage. If she was not a United States citizen, she could not have made an agreement to violate United States immigration laws by marrying a foreign national.

During trial, Reinier never testified she was a United States citizen. In Government's Exhibit 16, which was the immigration paper work for Reinier and Bashir, she marked the box which indicated she was a United States Citizen. Trial tr. 346; Government's Exhibit 16. However, she also verified by signing the document the marriage was a true marriage and not entered into for the purpose of evading any provision of the immigration laws. *Id.* So what is it? Is she a United States citizen marrying Bashir for a true reason, or is she not a United States citizen and the marriage was a "sham" as she testified to while under immunity. Trial tr. 339.

Second, the government failed to prove Bashir was a foreign national. If he was not a foreign national, he could not have made an agreement to violate United States immigration laws by marrying a female United States citizen.

The government also failed to prove that Bashir's intent when marrying Reinier was for the purpose of evading any provision of the immigration laws as required by 8 U.S.C. § 1325(c). Bashir may have intended the marriage to be genuine thus not in violation of the law. Bashir never testified at trial and thus, there is no evidence of his intent. Additionally, there was no evidence that it was his handwriting or signature contained in the immigration documents contained in Government's Exhibit 16.

Third, there was no motivation for Anwar to arrange this marriage. There was no evidence Anwar financially or emotionally benefited from the marriage.

3. Anwar did not conspire with Le Anne Roof and Amy Gauthier.

In the verdict forms, the jury also found that Anwar conspired with Leanne Roof and Amy Gauthier. Verdict Form-Count 1, Question 2; App. 38.

Roof did not testify at trial. The government was afraid to call her and admitted to the court that it depended on what day you talk to Roof whether or not she would agree Anwar had anything to do with a fraudulent marriage. Trial tr. 18, 25. Over Anwar's objections, the government got around this by calling Cheryl Stempien to testify to what she allegedly saw and overheard. Trial tr. 178-82.

Cheryl Stempien testified that Roof was her niece. Trial tr. 243. Stempien claimed she attended a wedding between Roof and "Younis" at the Blawk Hawk County Courthouse. Trial tr. 249. Stempien first testified the wedding occurred in the early 90's, but then said it occurred in the late 90's. Trial tr. 245-48. During the course of the wedding Stempien said she heard Anwar say that he would pay Roof $2,000.00 to marry "Younis." Trial tr. 250. After the wedding they went out to a restaurant. Trial tr. 250-51. They lived together and the marriage lasted approximately two weeks. Trial tr. 250, 254.

During trial the government failed to prove that an agreement to violate the immigration laws existed between Anwar, Roof, and "Younis." "Younis" did not testify at trial.

The government failed to prove that Roof was a female United States citizen and that "Younis" was a foreign national.

The government failed to prove that Roof and "Younis" did not plan to live together as husband and wife and that the marriage was for the purpose of evading any provision of the immigration laws.

These failures would mean that there is no proof that their marriage was for the purpose of evading any provision of the immigration laws as required by 8 U.S.C. § 1325(c).

Amy Gauthier testified Anwar asked her to marry his nephew in Pakistan and she said no. Trial tr. 292-93. There was no agreement to violate immigration laws between them. Additionally, the government failed to prove Gauthier was a female United States citizen and the nephew in Pakistan was a foreign national.

The government also failed to prove the nephew in Pakistan wanted to marry in order to avoid immigration laws.

B. Challenge to Marriage Fraud.

In this case the crime of marriage fraud, as charged in Count 2, has three essential elements:

> *The crime of marriage fraud as charged in Count 2 of the Indictment has three essential elements, which are:*
>
> *One, a person knowingly entered into a marriage;*
>
> *Two, the marriage was entered into for the purpose of evading any provision of the immigration laws; and*

Three, the person knew or had reason to know of the relevant immigration laws.

A person may be found guilty of marriage fraud even if he personally did not do every act constituting the offense charged if he aided and abetted the commission of marriage fraud.

In order to have aided and abetted the commission of marriage fraud as charged in Count 2, the defendant must, before or at the time the crime was committed,

(1) have known that marriage fraud was being committed or going to be committed by Amanda Reinier and Hamid Bashir;

(2) have knowingly acted in some way for the purpose of causing, encouraging, and/or aiding the commission of marriage fraud between Amanda Reinier and Hamid Bashir;

(3) have known that the marriage between Amanda Reinier and Hamid Bashir was entered into for the purpose of evading any provision of the immigration laws; and

(4) have known or had reason to know of the relevant immigration laws.

Jury Instruction 20: App. 35.

The evidence in this case was insufficient to find Anwar guilty of the crime of aiding and abetting the commission of marriage fraud between Amanda Reinier and Hamid Bashir. For the exact same reasons, there was insufficient evidence to prove that Anwar conspired to commit marriage fraud with Reinier and Bashir, there is

insufficient evidence to prove Anwar aided and abetted the commission of marriage. *See supra* pp. 14, 15.

Based on the lack of evidence regarding the citizenship of the co-conspirators, the lack of evidence regarding the intent of the parties, and for all the reasons stated in this argument Counts 1 and 2 should be dismissed with prejudice.

II. THE DISTRICT COURT COMMITTED ERROR, AND ANWAR WAS PREJUDICED, WHEN IT PERMITTED HIS PRIOR BAD ACTS TO BE ENTERED INTO EVIDENCE: NO LIMITING INSTRUCTION WAS GIVEN.

Prior to and constantly during trial, Anwar objected to two types of evidence being introduced to the jury: (1) testimony from seven witnesses regarding Anwar's alleged attempts in arranging marriages, and (2) testimony from two witnesses that Anwar was involved in extra-marital affairs. Motion in Limine; Supplement; Trial tr. 54-61, 141-144, 170-183, 607-636, 701-706. The court admitted all the evidence. Order (2/19/04) pp. 7-8; Order, (9/20/04) pp. 19-24.

Mary Tucker, Keeley Hoyt Ali, Essie Cooper, Sherry Ali, Amy Gauthier, Kayleen Nazir, and Saqib Chudarry were all going to testify that Anwar was involved in arranging marriages. Anwar objected to all their testimony and argued their testimony was inadmissible under the Federal Rules of Evidence and if their testimony was admissible, he was entitled to a 404(b) cautionary instruction. Trial tr. 54-61, 141-144, 170-183.

The prejudice that experienced trial counsel felt Anwar would endure through the introduction of the 404(b) evidence is apparent by his request for a limiting

instruction on the first day of trial before the government even presented its first 404(b) witness Mary Tucker. Trial tr. 60-61. The trial court shall, upon request, instruct the jury that the similar acts evidence is to be considered only for the proper purpose for which it was admitted. *Huddleston v. United States*, 485 U.S. 681, 691-92, 108 S. Ct. 1496, 1502, 97 L. Ed. 2d 771 (1988).

Counsel continued with the request when the government presented its second 404(b) witness Keely Hoyt Ali. Trial tr. 141-44. Counsel then again at the beginning of the second day of trial renewed the request before the government presented its next four 404(b) witnesses (Essie Cooper, Sheri Ali, Amy Gauthier, and Kayleen Nazir). Trial tr. 170-83. All these witnesses testified during the second day of trial. Trial tr. 169. It was not until the fourth day of trial that the district court determined that the evidence from the six witnesses was 404(b) evidence – two days after the last 404(b) witness had testified. Trial tr. 702-06.

Prior to the court's determination that the evidence was 404(b) evidence, the government argued, and the court found, their testimony was substantive evidence of the conspiracy and allowed the testimony. *Id.* The court denied Anwar's request for a cautionary instruction because the court viewed the evidence as substantive evidence of the conspiracy, not 404(b) evidence. Trial tr. 60-61, 142-144. The court also ruled that if it had erred in its ruling regarding substantive evidence, the evidence was nevertheless admissible under 404(b). *Id.* If the district court was relying on its alternative holding that it was 404(b) evidence, it should have given a limiting instruction as repeatedly requested and required by law. Trial tr. 60-61, 142-144, 177-78.

On the fourth day of trial at the close of the evidence, Anwar requested the testimony from these witnesses be struck from the record. Trial tr. 702. The court then changed its ruling regarding what was substantive evidence of the conspiracy:

> *As mentioned to the attorneys this morning when we were talking about jury instructions, the Court finds that the following is 404(b) evidence and not substantive evidence of the conspiracy that was pled.*
>
> *One, Anwar's alleged approach to Mary Tucker to marry a young Pakistani named Bobby, or another individual who was standing there.*
>
> *Two, Anwar's alleged approach to Keeley Hoyt Ali to marry – to marry Pakistani men for the purpose of assisting them to get their immigration papers.*
>
> *Third, Anwar's alleged approach to Essie Cooper to marry Pakistani men for the purpose of assisting them in getting their immigration papers.*
>
> *Four, Anwar's alleged approach to Sherry Ali to marry Saeed Ahmad, or any other Pakistani men for the purpose of assisting them in getting their immigration papers.*
>
> *And, five, Anwar's alleged approach to Amy Gauthier for the purpose of assisting them in getting their immigration papers by marrying them.*
>
> *I find it's 404(b) evidence. It's relevant on the issue of Defendant's intent. The Court finds the evidence is admissible, and its probative value is not outweighed by the danger of unfair prejudice*

> *to the Defendant. So under the 403 analysis, I find that it should remain in the record.*

Trial tr. 705-706. In the final jury instructions the court provided a cautionary instruction. Final Jury Instruction 11.

Anwar was prejudiced by the failure to give limiting instructions during trial because the jury was unable to analyze each of the six witnesses under the guidance of a limiting instruction, over a two day period, at the time of their testimony. A limiting instruction the Supreme Court recognizes helps dissipate the unfair prejudice of the admission of 404(b) evidence:

> We share petitioner's concern that unduly prejudicial evidence might be introduced under Rule 404(b). *Michelson v. United States,* 335 U.S. 469, 475-476, 69 S. Ct. 213, 218-219, 93 L. Ed. 168 (1948). We think, however, that the protection against such unfair prejudice emanates not from a requirement of a preliminary finding by the trial court, but rather from four other sources: first, from the requirement of Rule 404(b) that the evidence be offered for a proper purpose; second, from the relevancy requirement of Rule 402 – as enforced through Rule 104(b); third, from the assessment the trial court must make under Rule 403 to determine whether the probative value of the similar acts evidence is substantially outweighed by its potential for unfair prejudice, see Advisory Committee's Notes on Fed. Rule Evid. 404(b), 28 U.S.C. App., p. 691; S.Rep. No. 93-1277, at 25; and fourth, from Federal Rule of Evidence 105, which provides that the trial court shall, upon request, instruct the jury that the similar acts evidence is to be considered only for the proper purpose for which it was admitted.

United States v. Ingraham, 832 F.2d 229, 235 (1st Cir. 1987).

Huddleston, 485 U.S. at 691-92, 108 S.Ct. at 1502.

Prior to the error in failing to give a limiting instruction, the district court abused its discretion when it found the testimony from the seven witnesses regarding Anwar's alleged attempts in arranging marriages was admissible. Anwar argued to the district court, the testimony from the seven witnesses was not admissible because it was irrelevant, improper character evidence, and the probative value was not outweighed by the danger of unfair prejudice. *See* Fed. R. Evid. 401, 402, 403, and 404(b).

Evidence is admissible under Rule 404(b) if: "(1) it is relevant to a material issue; (2) it is similar in kind and not overly remote in time to the crime charged; (3) it is supported by sufficient evidence; and (4) its potential prejudice does not substantially outweigh its probative value." *United States v. Frazier*, 280 F.3d 835, 847 (8th Cir. 2002) (citations omitted).

In this case when focusing on the seven witnesses and their testimony, it is clear their testimony was not admissible.

Mary Tucker testified Anwar was aware she was unmarried and struggling financially. Trial tr. 116-25. She testified Anwar brought two Pakistani men into a store and asked her to marry them and she said no. Trial tr. 102-05. There was no agreement. There was no proof that the men were foreign nationals or that marriage was not for a true purpose for the Pakistani men.

Keeley Hoyt Ali testified Anwar asked her to marry two Pakistanis and she said no. Trial tr. 140-50. She had

prior relationships with men from Pakistan and India. Trial tr. 153, 155-58, 162-65. She had been involved with Mamoon Akhtar, who was married, and felt Anwar should have told her Mamoon was married. Trial tr. 156-57, 160, 191, 427. There was no proof Keeley Ali was a United States citizen, that the men were foreign nationals, or that marriage was not for a true purpose for the Pakistani men.

Essie Cooper testified Anwar asked her to marry a guy from Pakistan and she said no. Trial tr. 206-208. Cooper did marry Saqib Chudarry so he could stay in the United States, but Anwar had nothing to do with this. Trial tr. 208-12, 215-16, 227-31. There was no proof Cooper was a United States citizen, that the man was a foreign national, or that marriage was not for a true purpose for the Pakistani male.

Sherry Ali testified Anwar asked her to marry foreign nationals, but she said no. Trial tr. 264-67. Ali had been fired from one of Anwar's stores for stealing. Trial tr. 272-73. She also lied to INS regarding her marriage to her husband Rehmat Ali. Trial tr. 260, 275-79. There was no proof Ali was a United States citizen, that the men were foreign nationals, or that marriage was not for true purpose for the foreign nationals.

Amy Gauthier testified Anwar asked her to marry his nephew in Pakistan and she said no. Trial tr. 292-93. The government failed to prove that Gauthier was a female United States citizen, that the nephew in Pakistan was a foreign national, and that the nephew in Pakistan wanted to marry in order to avoid immigration laws.

Kayleen Nazir testified Anwar asked her to marry his nephew in Pakistan and she said no. Trial tr. 438-43. Nazir had lied to law enforcement regarding her husband Akhlaq (Jack) Nazir. Trial tr. 433-35, 444. Jack Nazir and

Anwar did not get along. Trial tr. 444-52. There was no proof that Nazir was a United States citizen, that the nephew was a foreign national, or that the marriage was not for a true purpose for the foreign national.

Saqib Chudarry never testified Anwar had anything to do with the marriage between him and Essie Cooper. Trial tr. 468-72.

Based on all this 404(b) testimony, Anwar was unfairly prejudiced. The government used this evidence to argue if Anwar tried to set up these marriages, he also did it for the Counts in the Indictment. Trial tr. 731-41. Calling seven witnesses to support this argument is strong propensity evidence. The government was permitted to pile on bad acts evidence from seven witnesses when there was no evidence regarding the citizenship of the participants and no evidence of the intent of all participants. The foreign nationals were but ghosts who never materialized at trial. The evidence was inadmissible because its probative value was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *See* Fed. R. Evid. 403.

The district court also abused its discretion when it admitted testimony regarding extra-marital affairs. Anwar was prejudiced when testimony was introduced regarding his "personal relationships" with LeAnne Roof and Sherry Ali. Trial tr. 244-45, 251, 281-85. This evidence should have been excluded under Federal Rule of Evidence 403 and 404(b) for the following reasons.

First, the testimony did not fall within the definition of "relevant evidence." "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more

probable or less probable than it would be without the evidence. Fed. R. Evid. 401.

Testimony regarding Anwar's personal relationships with Roof and Sherry Ali did not make it more or less likely that Anwar conspired to assist persons to commit marriage fraud or that he aided and abetted the entry into marriage of two persons for the purpose of evading immigration laws. The inference the marriages for Roof and Ali were to be false marriages because Anwar was having an alleged affair with them at the time was not supported by the evidence. There was no evidence that having the alleged extra-marital affair meant that Anwar would not want his paramour to enter into a true marriage.

Second, the alleged conduct is not similar in kind to the crimes charged.

Third, the relationships were not supported by sufficient evidence. Anwar's "personal relationship" with Roof was entered into evidence through the testimony of Cheryl Stempien. Stempien had no personal knowledge whether Anwar had an intimate relationship with Roof. Trial tr. 244-45, 251.

Sherry Ali's testimony was not believable. She had been fired from one of Anwar's stores for stealing and had lied to INS regarding her marriage to her husband Rehmat Ali. Trial tr. 260, 272-73, 275-79. Additionally, her citizenship status was in question.

Finally, the evidence was inadmissible because its probative value was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *See* Fed. R. Evid. 403. Evidence of Anwar's alleged affairs was unfairly prejudicial and

focused on character and the government's desire to portray Anwar as an immoral man.

Additionally, the court failed to give a Rule 404(b) cautionary instruction before the testimony.

Based on the excessive testimony from the seven witnesses and the extra-marital affair evidence, Anwar has been unfairly prejudiced and a new trial should be granted.

III. THE DISTRICT COURT'S FAILURE TO DISCLOSE A NOTE FROM THE JURY TO COUNSEL BEFORE RESPONDING VIOLATED ANWAR'S CONSTITUTIONAL RIGHTS TO BE PRESENT AT EVERY STAGE OF HIS TRIAL AS GUARANTEED BY THE FIFTH AND SIXTH AMENDMENTS: THE ERROR WAS NOT HARMLESS.

On Monday, February 23, 2004, after being informed the jury had reached a verdict, but prior to the jury coming into the courtroom, counsel was advised by the court the jury had requested to review the trial testimony from two witnesses. Jury Verdict tr. 2. The court responded that it was not available. *Id.* The court did not confer with the parties prior to responding to the note. Order (9/20/04) pp. 28-30.

A defendant has the constitutional right under the Fifth and Sixth Amendments, and the right under Rule 43(a) of the Federal Rules of Criminal Procedure, to be present at every stage of his criminal proceeding. *United States v. Gagnon*, 470 U.S. 522, 526, 105 S. Ct. 1482, 1484, 84 L. Ed. 2d 486 (1985).

The right also extends to situations when notes are received from the jury:

> Federal Rule Crim.Proc. 43 guarantees to a defendant in a criminal trial the right to be present 'at every stage of the trial including the impaneling of the jury and the return of the verdict.' Cases interpreting the Rule make it clear, if our decisions prior to the promulgation of the Rule left any doubt, that the jury's message should have been answered in open court and that petitioner's counsel should have been given an opportunity to be heard before the trial judge responded . . .

Rogers v. United States, 422 U.S. 35, 39, 95 S. Ct. 2091, 2095, 45 L. Ed. 2d 1 (1975).

When the jury requests to review trial testimony, the decision to read the testimony requested by the jury rests within the sound discretion of the trial judge. *United States v. Bassler*, 651 F.2d 600, 603 (8th Cir. 1981) (citations omitted). Only if it can be demonstrated that the failure to permit the reading of requested testimony created unfairness to the defendant is the defendant entitled to have the jury informed as a matter of right. *Id.* In *Bassler*, the Circuit Court ruled that providing the jurors with the transcript of all the testimony was virtually an impossibility since the testimony had not yet been transcribed and extended over a period of ten trial days. *Id.* at 603.

Other cases have permitted the reading back of trial testimony. *See United States v. Bear Ribs*, 722 F.2d 420, 422-23 (8th Cir. 1983) (we cannot say that the district court abused its discretion in allowing the testimony of the three witnesses to be read back); and *United States v. Haren*, 952 F.2d 190, 196-97 (8th Cir. 1992).

In this case it was not a discretionary decision by the district court to deny the jury the transcripts following

advocacy by both parties, but a decision by the court to address the jury without consulting Anwar and his counsel. The only discretion the court exercised was not to consult the parties before responding to the note. The jury's note should have been heard and discussed in open court. The jury requested the transcripts of the testimony from two very important government witnesses, Amanda Reinier and Amy Gauthier. They were the only witnesses to establish a violation of the marriage fraud of Count 2. Reinier was also a key co-conspirator used to establish a violation of the conspiracy charge of Count 1. The transcript pages for both witnesses only covered 100 pages. Trial tr. 289-388.

It can not be presumed the district court, when exercising its discretion, would have denied Anwar's request to have the transcripts given to the jury if he had been allowed to advocate his position in open court. The court had already changed its prior decision regarding what was substantive evidence of the conspiracy and what was 404(b) evidence (Trial tr. 60-61, 142-44, 170-83), and it may have been willing to change its prior instruction to the jury regarding reviewing part of the transcripts. *See supra* Issue II.

The government did not prove the error was harmless beyond a reasonable doubt. Before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 828, 17 L. Ed. 2d 705 (1967).

Prejudice should be presumed and Anwar granted a new trial.

CONCLUSION

For the above-stated reasons Anwar respectfully requests the Supreme Court grant a petition for a writ of certiorari on the three issues set out above.

Respectfully submitted,

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428 F.3d 1102, 68 Fed. R. Evid. Serv. 950

United States Court of Appeals,
Eighth Circuit.

UNITED STATES of America, Appellee,
Muhammad ANWAR, Appellant.

No. 04-3726.

Submitted: Sept. 12, 2005. Filed: Nov. 14, 2005.

Rehearing Denied Dec. 23, 2005.

Alfredo Parrish, argued, Des Moines, IA, for appellant.

Kandice Wilcox, argued, Asst. U.S. Attorney, Cedar Rapids, IA, for appellee.

Before BYE, RILEY, and BENTON, Circuit Judges.

RILEY, Circuit Judge.

Muhammad Anwar (Anwar) was charged with and convicted of conspiring to defraud the government by aiding and abetting others to enter into fraudulent marriages between 1993 and 2003, in violation of 18 U.S.C. § 371, and aiding and abetting a foreign national and a United States citizen in the act of entering into a fraudulent marriage for the purpose of evading immigration laws, in violation of 8 U.S.C. § 1325(c). The district court[1] sentenced Anwar to six months' imprisonment and three years' supervised release. Anwar appeals, raising multiple errors. Finding no reversible errors, we affirm.

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[1] The Honorable Linda R. Reade, United States District Judge for the Northern District of Iowa.

I. BACKGROUND

At trial, the jury heard testimony relating to Anwar's solicitation of female employees and acquaintances, from approximately 1993 to 2003, to marry Pakistani men for the purpose of allowing the men to evade United States immigration laws. Six women – specifically, Amy Gauthier (Gauthier), Mary Tucker (Tucker), Essie Cooper (Cooper), Keeley Hoyt Ali (Hoyt Ali), Sherry Ali (Ali), and Kayleen Nazir (Nazir) – testified Anwar approached them and asked if they would marry Pakistani men. The women understood the proposed marriages were not intended to be legitimate marital relationships, but instead would be "green card marriages," i.e., marriages for the purpose of helping the foreign nationals remain in the United States by evading immigration laws. With respect to Tucker, Cooper, Hoyt Ali, Ali, and Nazir, Anwar allegedly assured the women they would be taken care of financially in exchange for marrying Pakistani men.

Amy Skalsky-Akhtar (Akhtar), a United States citizen, testified Anwar asked her to marry his nephew, Tariq, who lived in Pakistan. Akhtar later married Tariq after knowing him for only five or six hours. The couple neither consummated the marriage nor lived together following the wedding. Following Akhtar's marriage to Tariq, Anwar allegedly asked Akhtar several times to begin working on Tariq's immigration paperwork. When Akhtar expressed her reluctance to do so, Anwar allegedly told her to file the paperwork and then divorce Tariq after he came to the United States.

The jury also heard testimony relating to Anwar's conduct between late 2002 and early 2003 in aiding a fraudulent marriage between Amanda Reinier (Reinier)

and Hamid Bashir (Bashir). Reinier testified that in January 2003 Anwar asked her to marry Bashir, who, according to Reinier's and Bashir's marriage certificate as well as Bashir's immigration documents, was born in Pakistan. Reinier agreed to do so. After knowing one another for less than two weeks, Reinier and Bashir married on February 13, 2003, in South Dakota, a state that has no waiting period for entering into marriage. At the time Reinier married Bashir, she had no intention of living with him as a spouse. Rather, her purpose was to allow Bashir to obtain a green card and residency in the United States. In exchange for marrying Bashir, Anwar allegedly told Reinier she would receive a truck. Anwar later made the down payment on the truck.

Following Reinier's and Bashir's wedding, Anwar allegedly began asking Reinier when she would file the necessary immigration paperwork, instructing her how to make the marriage appear legitimate by living with Bashir. Reinier ultimately signed the requisite paperwork on Bashir's behalf. After Reinier joined the military in about March 2003, Reinier realized her marriage to Bashir was wrong and wanted to end it. Anwar allegedly advised Reinier if she filed for no-fault divorce, Bashir's immigration status would not be affected. Reinier annulled the marriage in October 2003.

Gauthier, Reinier's sister, also testified regarding the Reinier and Bashir marriage. According to Gauthier, after Reinier's wedding Anwar asked her to write a letter in support of Bashir's application, allegedly telling her too many Pakistani people had submitted support letters to the Immigration and Naturalization Service (INS) and Reinier would get in trouble if Gauthier did not sign the letter. Gauthier subsequently filed the letter of support.

Over Anwar's pretrial objection, the government was allowed to present evidence concerning Anwar's romantic involvement with LeAnne Roof (Roof) and with Ali. Saqib Chudarry (Chudarry), a native of Pakistan, testified Anwar stated he had arranged marriages between various individuals, including a man named Unis Hamid (Unis) and Anwar's own girlfriend, Roof. Cheryl Stempien (Stempien), Roof's aunt, testified she attended a wedding between a man named Unis and Roof sometime in the 1990's, even though Roof and Anwar were involved in a personal relationship both before and after the wedding. Both during and immediately after the wedding, Stempien allegedly heard Anwar promise to pay Roof $2,000 to marry Unis. Finally, Ali testified she was in a romantic relationship with Anwar between 1993 and 1999, and that during the course of their relationship, Anwar allegedly asked Ali ten to twenty times to marry various Pakistani men so the men could get green cards.

The jury returned a guilty verdict on both counts of the two-count indictment. With regard to Count 1, the jury found Anwar conspired to commit marriage fraud with five individuals: Roof, Reinier, Gauthier, Bashir, and Akhtar. Additionally, the jury found five overt acts were committed in furtherance of the conspiracy: (1) Anwar asked Akhtar to marry his nephew, Tariq, in Pakistan, and Akhtar did so after knowing Tariq for a few hours; (2) Anwar repeatedly asked Akhtar to complete the INS paperwork to allow Tariq to enter and remain in the United States; (3) Anwar knowingly and unlawfully aided and abetted the marriage of Reinier, a United States citizen, and Bashir for the purpose of allowing Bashir to remain in the United States and evade immigration laws; (4) Bashir and Reinier were married on or about February 13, 2003, for the purpose of

allowing Bashir to evade immigration laws; and (5) following the marriage of Bashir and Reinier, Anwar continually directed Reinier to complete the INS paperwork to allow Bashir to evade immigration laws. With regard to Count 2, the jury found Anwar guilty of aiding and abetting the commission of marriage fraud on or about late 2002 and early 2003.

Following the verdict, the district court denied Anwar's motion for a new trial and motion for judgment of acquittal. Anwar appeals, asserting (1) insufficient evidence supported the convictions, (2) the verdict was contrary to the weight of the evidence, (3) the district court erred in admitting evidence of his romantic relationships, (4) the district court erred in admitting prejudicial Federal Rule of Evidence 404(b) evidence of his other solicitations and failing to give a limiting instruction before final jury instructions, (5) prosecutorial misconduct deprived him of a fair trial, (6) the government's improper contact with and intimidation of a defense witness denied him the opportunity to call the witness, (7) the district court erred in refusing to give his preferred jury instruction, (8) the district court's failure to consult defense counsel before responding to a request from the jury violated his constitutional rights, and (9) cumulative trial errors warrant a new trial.

I. DISCUSSION

A. Sufficiency of the Evidence

Anwar first contends there was insufficient evidence to support the jury's findings of guilt on both counts. "Jury verdicts are not lightly overturned." *United States v. Hood*, 51 F.3d 128, 129 (8th Cir.1995) (citation omitted). We will

reverse the jury's verdict for insufficient evidence "only if no reasonable jury could have found [Anwar] guilty beyond a reasonable doubt." *United States v. Henderson-Durand*, 985 F.2d 970, 975 (8th Cir.1993). In doing so, we view the evidence in the light most favorable to the jury's verdict, resolving any evidentiary conflicts in the government's favor. *United States v. Lee*, 356 F.3d 831, 836 (8th Cir.2003) (citation omitted).

Under the guidance of this strict standard of review, *see United States v. Galaviz-Luna*, 416 F.3d 796, 799 (8th Cir.2005), we conclude the evidence was sufficient to support Anwar's convictions. With regard to the conspiracy charge, the jury reasonably could have concluded there was an agreement among Anwar, male Pakistani foreign nationals, and female United States citizens to enter into fraudulent marriages to evade immigration laws. As evidence of Anwar's intent to evade immigration laws, Anwar solicited several women to enter into "green card marriages" with various Pakistani men for the purpose of helping the men remain in the United States, and assured the women they would be taken care of financially in exchange for marrying the foreign nationals. Furthermore, ample evidence supports the jury's finding Anwar conspired with Akhtar, Roof, Reinier, Bashir, and Gauthier. The government presented evidence concerning (1) Anwar's solicitation of Akhtar, Roof, and Reinier to marry Pakistani men for the purpose of helping the men obtain residency in the United States; (2) Akhtar's marriage to Anwar's nephew, Tariq, in Pakistan after knowing Tariq for only five to six hours; (3) Reinier's marriage to Bashir for the purpose of allowing Bashir to remain in the United States and evade immigration laws; (4) Anwar's repeated requests to Akhtar and Reinier to submit the requisite

immigration paperwork for their new husbands; and (5) Gauthier's letter in support of Bashir's immigration paperwork, filed pursuant to Anwar's request.

We reach the same conclusion with regard to Anwar's conviction for marriage fraud. Again, sufficient evidence supports the jury's verdict on the charge of aiding and abetting the commission of marriage fraud between Reinier and Bashir: (1) Anwar asked Reinier to marry Bashir, and Reinier agreed to do so; (2) at the time of the marriage, Reinier had no intention of living with Bashir as a spouse; (3) Reinier's purpose in marrying Bashir was to allow him to obtain a green card and United States residency; (4) Anwar inquired when Reinier would file Bashir's immigration paperwork, and instructed her how to make the marriage appear legitimate; and (5) Anwar advised Reinier that Bashir's immigration status would not be affected if she filed for no-fault divorce. Thus, we find no basis for disturbing the jury's verdict.

B. Verdict Against the Weight of the Evidence

Anwar next argues the jury's verdict was contrary to the weight of the evidence, thus warranting a new trial. In determining whether to grant a motion for a new trial on the ground the verdict is contrary to the weight of the evidence, "[t]he district court need not view the evidence in the light most favorable to the verdict; it may weigh the evidence and in so doing evaluate for itself the credibility of the witnesses." *United States v. Walker*, 393 F.3d 842, 847 (8th Cir.2005) (quoting *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir.1980)). If, after doing so, the court determines "the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of

justice may have occurred, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury." *Id.* at 847-48. The district court's denial of Anwar's motion for a new trial based on the weight of the evidence will be affirmed "absent a 'clear and manifest abuse of discretion.'" *United States v. Frank*, 354 F.3d 910, 916 (8th Cir.2004) (quoting *United States v. Jiminez-Perez*, 238 F.3d 970, 974 (8th Cir.2001)).

Our review of the record leads us to conclude the district court did not abuse its discretion in denying Anwar's motion for a new trial. Simply put, Anwar's convictions "do[ ] not evince a serious miscarriage of justice such that we must reject the jury's verdict or the district court's sense of justice." *Walker*, 393 F.3d at 848.

C. Alleged Trial Errors

1. Admission of Anwar's Relationships

Anwar contends the district court erred in admitting evidence regarding his personal relationships with Roof and Ali, arguing the evidence should have been excluded under Federal Rules of Evidence 403 and 404(b). "We review de novo the district court's interpretation and application of the rules of evidence, and review for an abuse of discretion the factual findings supporting its evidentiary ruling." *United States v. Claybourne*, 415 F.3d 790, 797 (8th Cir.2005) (citation omitted).

We conclude the district court did not err in admitting such evidence. Contrary to Anwar's argument, evidence of his romantic associations with Roof and Ali was admitted not under Rule 404(b), but rather "as substantive evidence of the conspiracy to commit marriage fraud." Specifically,

the district court found the evidence was "relevant to the issue of whether [Roof's and Ali's] marriages to other Pakistani men were fraudulent." We are not persuaded by Anwar's contention there "was no evidence that having the alleged extra-marital affair meant that Anwar would not want his paramour to enter into a true marriage." Anwar told Chudarry he had arranged marriages between Unis and Anwar's girlfriend, Roof. According to Stempien, Anwar promised to pay Roof $2,000 to marry Unis and was in a romantic relationship with Roof both before and after her wedding to Unis. Furthermore, while intimately involved with Ali from 1993 to 1999, Anwar asked Ali approximately ten to twenty times to marry different Pakistani men. Such evidence certainly is relevant and makes it more likely than not the women's marriages or proposed marriages to other Pakistani men were not for a legitimate purpose.

Additionally, we agree with the district court's determination "the relevance of Roof's and Ali's relationships with [Anwar] [was] not substantially outweighed by the danger of unfair prejudice." Unfair prejudice "means an undue tendency to suggest decision on an improper basis." *United States v. Adams*, 401 F.3d 886, 899-900 (8th Cir.2005) (citation omitted). However, evidence of Anwar's personal involvement with Roof and Ali does not appear to be "so inflammatory on [its] face as to divert the jury's attention from the material issues in the trial." *Id.* at 900 (citation omitted). Accordingly, we find no error on this issue.

2. Admission of Anwar's Solicitations of Fraudulent Marriages Under Rule 404(b)

Anwar next assigns as error the admission of evidence concerning his solicitations of Tucker, Hoyt Ali, Cooper, Ali, Gauthier, and Nazir to marry foreign nationals for the purpose of evading immigration laws. The district court initially admitted the testimony as substantive evidence of the conspiracy, yet noted if the court had erred in its ruling, the testimony also was admissible under Rule 404(b). Anwar argued the evidence was inadmissible, and, even if admissible, he was entitled to a Rule 404(b) cautionary instruction before each woman's testimony. His request was denied. At the close of the evidence, however, the district court held the evidence was admissible only under Rule 404(b) for the purpose of showing Anwar's intent to commit the offenses charged, and instructed the jury in this regard during final jury instructions. On appeal, Anwar reasserts his previous objections to this evidence.

"Giving great deference to the district court's determination in balancing the prejudicial effect and probative value of evidence of other crimes or acts, we will reverse the district court's evidentiary decision only when the evidence admitted clearly has no bearing on any issue involved." *Claybourne*, 415 F.3d at 797 (internal quotation omitted). The district court acted within its discretion in admitting evidence of Anwar's solicitations of other fraudulent marriages if (1) the evidence is relevant to an issue other than Anwar's character, (2) it is similar in kind and not overly remote to the crime charged, (3) it is supported by sufficient evidence, and (4) the potential unfair prejudice of the evidence does not substantially outweigh

its probative value. *United States v. Jackson*, 278 F.3d 769, 771 (8th Cir.2002) (citing *United States v. Green*, 151 F.3d 1111, 1113 (8th Cir.1998)).

Again, Anwar's claim of error fails. First, Anwar's prior acts of solicitation of American women to marry Pakistani men so the men could enter or remain in the United States are relevant to Anwar's intent to commit the charged conduct. Second, his prior bad acts are similar in kind to the crimes charged. Anwar was charged with conspiring to commit marriage fraud and aiding and abetting the commission of marriage fraud. His prior acts involved asking women to marry foreign nationals so the men could remain in the United States and evade immigration laws, and assuring the women they would be taken care of financially for entering into such a marriage. Also, the acts – occurring between 1993 and 2003 – are not overly remote, given Anwar was charged with engaging in a marriage fraud conspiracy between 1993 and November 2003. While "proximity in time is a factor in deciding whether to admit Rule 404(b) evidence, we have held that 'there is no fixed period within which the prior acts must have occurred.'" *Jackson*, 278 F.3d at 772 (quoting *United States v. Baker*, 82 F.3d 273, 276 (8th Cir.1996)). Third, there is sufficient evidence the alleged acts occurred. The district court found the testimony of the six women was credible, thus satisfying the government's burden to establish the alleged acts' occurrences by clear and convincing evidence. *See United States v. Callaway*, 938 F.2d 907, 910 (8th Cir.1991) (citation omitted). Fourth, the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. Evidence of Anwar's prior bad acts was probative of his intent to commit the charged conduct and was not so "inflammatory" as to

"divert the jury's attention from the material issues." *Adams*, 401 F.3d at 900. After carefully reviewing the record and giving great deference to the district court's determination, we conclude the district court acted within its discretion in admitting evidence of Anwar's prior acts under Rule 404(b). *See Claybourne*, 415 F.3d at 797.

We also find Anwar was not prejudiced by the district court's failure to give a limiting instruction before each woman's testimony. Generally, a limiting instruction should be given to inform the jury of the narrow purpose for which evidence of other acts is admitted. *See United States v. Perkins*, 94 F.3d 429, 434 (8th Cir.1996). Once the district court determined the evidence was admissible solely under Rule 404(b), the jury was instructed it could consider the evidence only on the issue of Anwar's intent. During oral argument, Anwar asserted he was prejudiced by the jury's inability to analyze each witness at the time of her testimony under the guidance of a limiting instruction. While we recognize the logic of Anwar's contention, we believe any potential prejudice was cured by the district court's inclusion of a limiting instruction on the proper use of the evidence during final jury instructions. "Exactly when to so instruct [the jury] is surely a matter within the district court's broad discretion, and we respectfully decline to micro-manage how that discretion should be exercised." *Id.* at 436.

D. Alleged Government Misconduct

This court employs a two-part test to analyze whether reversible prosecutorial misconduct exists: (1) whether the prosecutor's conduct was improper, and (2) whether such conduct prejudicially affected the defendant's substantial

rights so as to deprive the defendant of a fair trial. *United States v. Conrad*, 320 F.3d 851, 855 (8th Cir.2003). The prejudicial effect of prosecutorial misconduct is determined by "(1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court." *Id.* (quoting *United States v. Hernandez*, 779 F.2d 456, 460 (8th Cir.1985)). A district court's denial of a defendant's motion for mistrial based on alleged prosecutorial misconduct is reviewed for an abuse of discretion. *United States v. Beeks*, 224 F.3d 741, 745 (8th Cir.2000).

1. Failure to Disclose Chudarry's Testimony

During the prosecution's interview of Chudarry the evening before trial, Chudarry stated Anwar had made a $3,000 payment on his behalf while Chudarry was in custody on immigration-related charges. However, during direct examination, Chudarry said, after speaking to the government during the pre-trial interview, he had spoken to his girlfriend and realized someone other than Anwar made the $3,000 payment. Anwar moved for a mistrial, claiming the government's failure to disclose the exculpatory information was a violation of *Brady*,[2] Federal Rule of Criminal Procedure 16(c),[3] and the parties' stipulated

[2] The rule set forth in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), requires the government to disclose any evidence that is both favorable to the accused and material either to guilt or punishment. *United States v. Gonzales*, 90 F.3d 1363, 1368 (8th Cir.1996).

[3] Rule 16(c) requires a party who discovers additional evidence before or during trial to disclose its existence to the other party or the court if: "(1) the evidence or material is subject to discovery or inspection under th[e]

(Continued on following page)

discovery order requiring the production of Jencks Act [4] information. Finding no *Brady* violation or government misconduct, the district court denied the motion.

We conclude the district court did not abuse its discretion in denying the motion. First, there was no *Brady* violation, given Chudarry's testimony was not exculpatory and was disclosed during trial. *See Gonzales*, 90 F.3d at 1368. Second, there was no Rule 16(c) violation. Anwar fails to demonstrate why Chudarry's testimony was subject to discovery or whether its production was ordered or requested. Third, since no written statement of Chudarry's interview was created, no violation of the Jencks Act occurred. A review of Chudarry's testimony does not resemble an effort by the prosecution to "waft an unwarranted innuendo into the jury box," *see Beeks*, 224 F.3d at 746 (citation omitted), but rather an attempt to clarify the witness's testimony on what essentially turned out to be irrelevant evidence. Furthermore, even if the prosecution's conduct was improper, such conduct did not prejudicially affect Anwar's substantial rights so as to deprive him of a fair trial.

2. Failure to Disclose Gauthier's Informal Immunity

After Gauthier's testimony but before the prosecution rested its case, the prosecution informed defense counsel

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rule; and (2) the other party previously requested, or the court ordered, its production." Fed.R.Crim.P. 16(c).

[4] The Jencks Act, 18 U.S.C. § 3500, requires, upon motion by the defendant, the production of any written statements made by a government witness after the witness has testified on direct examination.

Gauthier had been granted informal immunity for signing an affidavit of support for her sister's fraudulent marriage. Following the district court's denial of Anwar's motion for a mistrial, a stipulation regarding Gauthier's immunity was read to the jury and also was included in the final jury instructions. Anwar contends the prosecution's failure to inform defense counsel of Gauthier's immunity before her testimony constitutes reversible prosecutorial misconduct.

Although the government concedes it was obligated to inform defense counsel of Gauthier's immunity from prosecution, Anwar fails to demonstrate how this error "prejudicially affected [his] substantial rights." *Conrad*, 320 F.3d at 855. While Anwar was unable to cross-examine Gauthier regarding her immunity, the curative actions taken by the court – evidenced by the stipulation and the reference to Gauthier's immunity during the final jury instructions – as well as the strength of other properly admitted evidence of Anwar's guilt, support the conclusion the district court did not abuse its discretion in denying Anwar's motion for a mistrial based on prosecutorial misconduct.

3. Government's Alleged Intimidation of Erin Sabir

Anwar further contends he was deprived of his Sixth Amendment right to call a witness on his behalf due to the government's alleged intimidation of Erin Sabir (Sabir). During trial, a hearing was held on whether law enforcement officers intimidated and threatened Sabir while serving a trial subpoena on her at her home. According to Sabir, the officers threatened to prosecute her for perjury if she testified on Anwar's behalf and stated her children

would be taken away from her and she would go to jail if she lied. Although the officers admitted mentioning the consequences for testifying falsely, they denied threatening or intimidating Sabir with the mention of jail or the loss of her children in connection with a perjury charge. Finding the officers' conduct did not prevent Anwar from calling Sabir to testify on his behalf, the district court denied Anwar's motion for a new trial.

After reviewing the district court's determination for an abuse of discretion, *see Beeks*, 224 F.3d at 745, we find none. "[W]arnings concerning the dangers of perjury cannot be emphasized to the point where they threaten and intimidate the witness into refusing to testify." *United States v. Risken*, 788 F.2d 1361, 1370 (8th Cir.1986) (quoting *United States v. Blackwell*, 694 F.2d 1325, 1334 (D.C.Cir.1982)). However, warnings by government agents to prospective witnesses regarding the consequences for testifying falsely are not improper *per se*. *Id.* In denying Anwar's motion, the district court noted (1) Sabir never stated she would refuse to testify if asked; (2) the officers' comments concerning the consequences of perjury did not intimidate Sabir into refusing to testify; (3) Sabir was present at the courthouse along with other potential defense witnesses during trial; and (4) Sabir was available to testify during trial, but was not called by the defense. While we recognize the government "should exercise considerable restraint when advising potential witnesses about the consequences of committing perjury," *id.* at 1371, we cannot say the district court abused its discretion in concluding Anwar was not prevented from calling Sabir to testify on his behalf.

E. Jury Questions

1. Anwar's Requested Jury Instruction

During jury deliberations, the district court received a note from the jury asking two questions, one of which read, "Instruction # 20 On Statements 1-4 (acts) do we need to find the defendant guilty of all 4 or just 1 of the 4." After conferring with both parties, the district court's written response to the jury's questions stated, "I received your note, a copy of which is attached. The answers to your questions are contained in Instruction Number 20 as well as all the other instructions. Please reread the instructions and continue to deliberate." Both parties agreed with the court's instruction, although Anwar's counsel stated his preferred response would be "yes."

Anwar now argues the district court's refusal to give his suggested answer to the jury's question constituted an abuse of discretion. *See United States v. Scout*, 112 F.3d 955, 960 (8th Cir.1997) (standard of review is abuse of discretion). We disagree. The district court's response – to which both parties agreed – adequately answered the jury's question. A thorough reading of Instruction Number 20 indicates the answer to the jury's question was contained therein. Furthermore, as the district court correctly noted, the jury's question was incapable of being answered in a "yes" or "no" fashion. Anwar's suggested response might have resulted in nothing but confusion. Thus, we conclude the district court did not abuse its discretion by refusing to give Anwar's preferred response.

2. Jury's Request for Transcripts

During the jury's deliberations, the district court received a note from the jury requesting transcripts of the

testimony of Gauthier and Reinier. Without consulting the parties, the district court responded in writing, reminding the jury, as it had in the court's preliminary instructions, no transcripts of witness testimony were available. The district court informed the parties of the note when the parties reconvened to receive the verdict, and stated it had felt it was not necessary to confer with the parties before answering the jury's question. Anwar contends his Fifth and Sixth Amendment rights as well as his right under Rule 43(a) of the Federal Rules of Criminal Procedure to be present at every stage of his criminal proceeding were violated when the district court responded to the jury's request without alerting or conferring with the parties about the proper response.

Under the guarantees of Rule 43(a),jury questions should be answered in open court, and defense counsel should be given an opportunity to be heard before the court responds. *Rogers v. United States*, 422 U.S. 35, 39, 95 S.Ct. 2091, 45 L.Ed.2d 1 (1975). However, in some cases, a violation of Rule 43(a) may be harmless error. *Id.* at 40, 95 S.Ct. 2091. "[C]ommunications between judge and jury in the absence of the defendant and his counsel are improper and presumptively prejudicial. This presumption may be overcome, however, by a clear indication of an absence of prejudice." *United States v. Koskela*, 86 F.3d 122, 125 (8th Cir.1996).

We conclude any potential violation of Rule 43(a) and Anwar's constitutional rights in this case amounts to no more than harmless error. During preliminary jury instructions, the district court informed the jury transcripts would not be available, and during final jury instructions, the jury was reminded this instruction remained in effect. Furthermore, the "decision to read testimony requested by

the jury rests within the sound discretion of the trial judge." *United States v. Varsalona*, 710 F.2d 418, 420 (8th Cir.1983) (citations omitted). The district court's decision, which reiterated its previous instructions to the jury, more than likely would not have changed following a conference with the parties. We agree with the district court that, even if a violation of Rule 43(a) occurred, such error was harmless. Therefore, the district court's denial of Anwar's motion for a new trial on this basis was not an abuse of discretion.

F. Cumulative Trial Errors

Finally, Anwar contends a new trial is warranted based on the cumulative effect of the alleged errors. "We may reverse where the case as a whole presents an image of unfairness that has resulted in the deprivation of a defendant's constitutional rights, even though none of the claimed errors is itself sufficient to require reversal." *United States v. Riddle*, 193 F.3d 995, 998 (8th Cir.1999); *see, e.g., United States v. Walrath*, 324 F.3d 966, 971 (8th Cir.2003). This court will not reverse based upon the cumulative effect of errors unless there is substantial prejudice to the defendant. *United States v. Gladfelter*, 168 F.3d 1078, 1083 (8th Cir.1999). After reviewing the record, we reject Anwar's argument. "The cumulative effect, if any, of the claimed errors was not such as to deny [Anwar] a fair trial." *United States v. Steffen*, 641 F.2d 591, 598 (8th Cir.1981). Accordingly, we affirm the district court's decision.

III. CONCLUSION

For the foregoing reasons, we affirm Anwar's convictions and sentence.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE**
V.	(Filed Nov. 5, 2004)
MUHAMMAD ANWAR	CASE NUMBER: **CR 03-2061-LRR**
	USM Number: **09056-029**
	Alfredo G. Parrish, Attorney at Law Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

■ was found guilty on count(s) 1 and 2 of the two-count 11/19/2003 indictment. after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 371	Conspiracy to Defraud the United States	11/19/2003	1
8 U.S.C. § 1325(c) and 18 U.S.C. § 2	Aid and Abet Marriage Fraud to evade	Early 2003	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material change in economic circumstances.

November 5, 2004
Date of Imposition of Judgment

/s/ Linda R. Reade
Signature of Judicial Officer

Linda R. Reade
U.S. District Court Judge
Name and Title of Judicial Officer

11-5-04
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **6 months. This term of imprisonment consists of a six-month term imposed on Count 1 and a six-month term imposed on Count 2, with these terms of imprisonment to run concurrently with each other.**

(Note: If, hereafter, the United States Sentencing Guidelines are found to be unconstitutional, as a whole or in relation to this case, the Court, without further hearing or order,

hereby imposes in its discretion a sentence of 12 months imprisonment with all other sentence findings remaining unchanged. In deciding what sentence to impose, the Court considered the factors set forth at 18 U.S.C. § 3553(a)(1)-(7).)

■ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to a Bureau of Prisons facility as close to his family as possible, commensurate with his security and custody classification needs.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States marshal for this district:
☐ at _____ ☐ a.m. ☐ p.m. on _____.
☐ as notified by the United States Marshal.

■ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on _____.
■ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **3 years. This term of supervised release consists of a three-year term imposed on Count 1 and a three-year term imposed on Count 2, with these terms of supervised release to run concurrently with each other.**

If you are removed from the United States, you will not be on "active supervision." If you obtain prior permission from the Director of Homeland Security or his designee and lawfully reenter the Untied States during the term of supervised release, you shall report immediately, in person, to the nearest U.S. Probation Office.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable)

■ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check if applicable.)

☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall pay any financial penalty that is imposed by this judgment.

2. The defendant shall provide the probation officer with access to any requested financial information.

3. If the defendant-is subject to removal from the United States, he shall be delivered to a duly authorized immigration official for removal and shall remain outside the United States, unless he obtains prior permission from the Director of Homeland Security or his designee to lawfully reenter the United States.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 200.00	$ 10,000.00*	$ 0.00

* **The Court imposed a $5,000 fine on Count 1 and a $5,000 fine on Count 2, for a total of $10,000.**

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$_____	$_____	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may

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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

■ the interest requirement is waived for the ■ fine ☐ restitution. ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of loses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ■ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ■ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of ___ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal ___(e.g., weekly, monthly, quarterly) installments of $___ over a period of _____(e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

While incarcerated the defendant shall make monthly payments in accordance with the Bureau of Prison's Financial Responsibility Program. The amount of the monthly payments shall not exceed 50% of the funds available to the defendant through institution or non-institution (community) resources and shall not be less than $25 per quarter.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total amount, Joint and Several Amount, and corresponding payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 04-3726

United States of America,	)	
	)	
Appellee,	)	Appeal from the United
	)	States District Court for the
v.	)	Northern District of Iowa.
	)	
Muhammad Anwar,	)	
	)	
Appellant.	)	

The petition for rehearing by the panel filed by Appellant Anwar is Denied.

(5193-010199)

December 23, 2005

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN WATERLOO DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MUHAMMAD ANWAR, Defendant.	No. CR 03-2061 **FINAL JURY INSTRUCTIONS**

* * *

INSTRUCTION NUMBER 15

The crime of conspiracy to commit marriage fraud as charged in Count 1 of the Indictment has four essential elements, which are:

One, between about 1993 and November 2003, two or more persons reached an agreement or came to an understanding to enter into marriage for the purpose of evading a provision of the immigration laws;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding was to evade immigration laws; and

Four, while the agreement or understanding was in effect, a person or persons who had joined in the

agreement knowingly did one or more of the following acts:

1. In about March 2000, in Karachi, Pakistan, Muhammad Anwar asked Amy Akhtar, a then-unmarried United States citizen to marry his nephew in Pakistan. Amy Akhtar went through with the marriage after knowing the nephew for a few hours.

2. Between about March 2000 and about November 2000, and after Amy Akhtar returned to the United States, defendant Muhammad Anwar repeatedly asked Amy Akhtar to complete the paperwork to allow Anwar's nephew to enter and remain in the United States.

3. In late 2002 or early 2003, Muhammad Anwar did knowingly and unlawfully aid and abet the marriage of Amanda Reinier, a then-unmarried female and United States citizen, and Hamid Bashir for the purpose of allowing Hamid Bashir to remain in the United States and evade immigration laws.

4. Hamid Bashir and Amanda Reinier were married on or about February 13, 2003. The marriage was a for the purpose of allowing Hamid Bashir to evade immigration laws.

5. After February 13, 2003, Muhammad Anwar purchased or assisted in purchasing a vehicle for Amanda Reinier in exchange for her agreement to marry Hamid Bashir.

6. Shortly after the marriage on February 13, 2003, Muhammad Anwar, on a number of occasions, continually directed Amanda Reinier to complete the INS paperwork to allow Hamid Bashir to evade immigration laws.

> 7. In about October 2003, Muhammad Anwar strongly discouraged Amanda Reinier, then married to Hamid Bashir, from continuing with proceedings to having her marriage annulled. Muhammad Anwar suggested to her that an annulment, as opposed to a divorce, would interfere with Hamid Bashir's ability to remain in the United States and continue to evade the effective enforcement of immigration laws.

for the purpose of carrying out or carrying forward the agreement or understanding.

To assist you in determining whether there was an agreement or understanding to enter into marriage for the purpose of evading a provision of the immigration laws, you are advised that the elements of marriage fraud are listed in Instruction Number 20. Keep in mind that Count 1 of the Indictment charges a conspiracy to commit marriage fraud and not that marriage fraud was committed.

If all of the essential elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count 1; otherwise you must find the defendant not guilty of the crime charged under Count 1.

* * *

INSTRUCTION NUMBER 20

The crime of marriage fraud as charged in Count 2 of the Indictment has three essential elements, which are:

One, a person knowingly entered into a marriage;

Two, the marriage was entered into for the purpose of evading any provision of the immigration laws; and

Three, the person knew or had reason to know of the relevant immigration laws.

A person may be found guilty of marriage fraud even if he personally did not do every act constituting the offense charged if he aided and abetted the commission of marriage fraud.

In order to have aided and abetted the commission of marriage fraud as charged in Count 2, the defendant must, before or at the time the crime was committed,

(1) have known that marriage fraud was being committed or going to be committed by Amanda Reinier and Hamid Bashir;

(2) have knowingly acted in some way for the purpose of causing, encouraging, and/or aiding the commission of marriage fraud between Amanda Reinier and Hamid Bashir;

(3) have known that the marriage between Amanda Reinier and Hamid Bashir was entered into for the purpose of evading any provision of the immigration laws; and

(4) have known or had reason to know of the relevant immigration laws.

For you to find the defendant guilty of marriage fraud by reason of aiding and abetting as charged under Count 2, the Government must prove beyond a reasonable doubt that all of the essential elements of marriage fraud were committed by some person or persons and that the defendant aided and abetted the commission of that crime; otherwise you must find the defendant not guilty of the crime charged under Count 2.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN WATERLOO DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MUHAMMAD ANWAR, Defendant.	No. CR 03-2061 **VERDICT FORM – COUNT 1**

We, the jury, make the following findings on the questions put to us regarding Count 1 of the Indictment:

Question 1: We, the jury, find the defendant Muhammad Anwar, Guilty (Guilty/Not Guilty) of the crime of conspiracy to commit marriage fraud between about 1993 and November 2003, as charged in Count 1 of the Indictment.

(If your answer to Question 1 is "not guilty" do not answer any further questions on this form as to Count 1 and proceed to Verdict Form – Count 2. If your answer to Question 1 is "guilty" please proceed to Question 2).

Question 2: Please place a check mark (✓) before the name or names of the persons you unanimously find Defendant conspired with:

✓ LeAnne Roof

✓ Amanda Reinier

✓ Amy Gauthier

✓ Hamid Bashir

✓ Amy Akhtar

Question 3: Please place a check mark (✓) before the overt act or acts you unanimously find were committed in furtherance of the conspiracy:

✓ a. In about March 2000, in Karachi, Pakistan, Muhammad Anwar asked Amy Akhtar, a then-unmarried United States citizen to marry his nephew in Pakistan. Amy Akhtar went through with the marriage after knowing the nephew for a few hours.

✓ b. Between about March 2000 and about November 2000, and after Amy Akhtar returned to the United States, defendant Muhammad Anwar repeatedly asked Amy Akhtar to complete the paperwork to allow Anwar's nephew to enter and remain in the United States.

✓ c. In late 2002 or early 2003, Muhammad Anwar did knowingly and unlawfully aid and abet the marriage of Amanda Rainier, a then-unmarried female and United States citizen, and Hamid Bashir for the purpose of allowing Hamid Bashir to remain in the United States and evade immigration laws.

✓ d. Hamid Bashir and Amanda Reinier were married on or about February 13, 2003. The marriage was ~~a~~ for the purpose of allowing Hamid Bashir to evade immigration laws.

___ e. After February 13, 2003, Muhammad Anwar purchased or assisted in purchasing a vehicle for Amanda Reinier in exchange for her agreement to marry Hamid Rashir.

✓ f. Shortly after the marriage on February 13, 2003, Muhammad Anwar, on a number of occasions, continually directed Amanda Rainier to

complete the INS paperwork to allow Hamid Bashir to evade immigration laws.

___ g. In about October 2003, Muhammad Anwar strongly discouraged Amanda Reinier, then married to Hamid Bashir, from continuing with proceedings to having her marriage annulled. Muhammad Anwar suggested to her that an annulment, as opposed to a divorce, would interfere with Hamid Bashir's ability to remain in the United States and continue to evade the effective enforcement of immigration laws.

/s/ Dennis Usher
FOREPERSON

February 23, 2004
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN WATERLOO DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MUHAMMAD ANWAR, Defendant.	No. CR 03-2061 **VERDICT FORM – COUNT 2**

We, the jury, find the defendant, Muhammad Anwar, Guilty (Guilty/Not Guilty) of the crime of aiding and abetting the commission of marriage fraud on or about late 2002 and early 2003, as charged in Count 2 of the Indictment.

/s/ Dennis Usher
FOREPERSON

February 23, 2004
DATE